

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

VISION MARINE TECHNOLOGIES INC.,

Plaintiff,

v.

SAN GABRIEL ASSETS LLC,

Defendant.

Case No.

COMPLAINT

Plaintiff Vision Marine Technologies Inc., by and through its undersigned counsel, Dentons US LLP, for its Complaint against Defendant San Gabriel Assets LLC, alleges as follows:

SUMMARY OF THE ACTION

1. Plaintiff Vision Marine Technologies Inc. (“Vision Marine”) brings this action against Defendant San Gabriel Assets LLC (“San Gabriel”) to recover damages for its breach of a Securities Purchase Agreement executed by Vision Marine and San Gabriel, among others, on January 20, 2023 (the “SPA”). A copy of the SPA is attached as Exhibit A to this Complaint.

2. Through the SPA, Vision Marine agreed to sell, and San Gabriel agreed to buy, \$5 million worth of Vision Marine securities. Despite having made a binding commitment to purchase those securities, San Gabriel failed to pay for its purchase at closing or since.

3. Vision Marine thus brings this action to recover damages caused by San Gabriel’s failure to complete the purchase.

PARTIES

4. Plaintiff Vision Marine is a corporation organized under the laws of Quebec, Canada, with its principal place of business in Boisbriand, Quebec, Canada. Vision Marine is a global leader in the electric recreational boating industry. Among other things, Vision Marine designs, manufactures, and sells electric outboard powertrain systems and related technology, including electric boats.

5. Defendant San Gabriel is a limited liability company organized under the laws of Delaware, with its principal place of business in California. Upon information and belief, San Gabriel is an investment fund whose sole member is Corbin Blume. Upon information and belief, Corbin Blume is a citizen of California because he is a foreign national who is lawfully admitted for permanent residence in the United States and is domiciled in Newport Beach, California.

JURISDICTION AND VENUE

6. This Court has personal jurisdiction over both Plaintiff Vision Marine and Defendant San Gabriel because both parties agreed in the SPA to submit to the exclusive jurisdiction of a Manhattan court for the adjudication of any dispute under the SPA, and thereby waived any objection to the personal jurisdiction of this Court. *See* Ex. A, SPA § 5.9.

7. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §1332(a)(2) because there is diversity of citizenship between a citizen of California and a citizen of a foreign nation and the amount in controversy exceeds \$75,000.

8. Venue is appropriate in this Court because the parties agreed in the SPA to litigate any disputes related to the SPA in a Manhattan court and waived any objection that this Court is an improper or inconvenient venue. *See* Ex. A, SPA § 5.9.

THE EQUITY FINANCING RAISE

9. Vision Marine is in a capital intensive business.

10. In 2022, Vision Marine began an equity financing raise, i.e., a process of securing funding to be used as working capital by the company through the sale of a portion of its equity. Roth Capital Partners, LLC (“Roth”) acted as placement agent to assist Vision Marine raise this capital.

11. By January of 2023, Vision Marine and Roth had identified several investors who were willing to purchase a combined total of approximately \$7.3 million worth of Vision Marine securities. The biggest prospective investor by far was San Gabriel, who was willing to purchase \$5 million worth of Vision Marine securities.

12. As a part of the negotiations between San Gabriel and Vision Marine, Mr. Blume negotiated a board nomination agreement with Vision Marine by which he would have the right to nominate a board member in consideration for his significant investment. The Vision Marine board subsequently approved the creation of a vacancy to allow for the appointment of Mr. Blume’s nominee. Mr. Blume subsequently signed a nomination agreement.

13. On January 20, 2023, the parties to the SPA, including Vision Marine and San Gabriel, executed the SPA, with the investment group agreeing and committing to purchase a total of approximately \$7.3 million worth of securities from Vision Marine at a purchase price of \$4.21 per share, which was equal to the closing price of Vision Marine’s common shares on the Nasdaq Capital Market on January 19, 2023.

14. Later on January 20, 2023, Vision Marine issued a press release announcing *inter alia* that it had entered into a definitive agreement with certain investors for the issuance and sale

of 1,741,901 of its common shares (or common share equivalents) for a price of \$4.21 per share, for gross proceeds of approximately \$7.3 million, in a registered direct offering.

THE SECURITIES PURCHASE AGREEMENT

15. Each investor is defined as a “Purchaser” under the SPA.

16. Under the SPA, each Purchaser agreed to pay a Subscription Amount, identified on their signature page, in exchange for the corresponding number of common shares and common share equivalents, which were also identified on each Purchaser’s signature page.

17. The SPA required each Purchaser to pay their Subscription Amount to Vision Marine on or before the Closing Date. *See* Ex. A, SPA §§ 2.1, 2.2(b).

18. The SPA provided that Vision Marine would then issue the common share and common share equivalents to the Purchaser via a Delivery Versus Payment method described in the contract. *See* Ex. A, SPA § 2.1.

19. The parties agreed that the SPA would be governed by New York law. *See* Ex. A, SPA § 5.9.

20. The SPA provides that in any action to enforce the SPA, the prevailing party shall be entitled to its reasonable attorneys’ fees, costs, and other expenses incurred in prosecuting such action. *See* Ex. A, SPA § 5.9.

21. By executing the SPA, San Gabriel committed to purchasing \$5 million of Vision Marine securities, which would consist of (a) 990,000 common shares at a purchase price of \$4.21 per share, and (b) 197,648 pre-funded warrants to purchase common shares (common share equivalents) at a purchase price of \$4.209 per share and an exercise price of \$0.001 per share. Included with the purchase price of each common share and pre-funded warrant was a

warrant for the purchase of a common share at an exercise price of \$4.21 per share (1,187,648 common warrant shares). *See* Ex. A, SPA § 5.15 & San Gabriel Purchaser Signature Page.

22. Pursuant to the SPA, Vision Marine agreed to sell and San Gabriel agreed to purchase the agreed securities on the Closing Date, January 24, 2023.

23. The SPA states that on or before the Closing Date, January 24, 2023, San Gabriel shall deliver its \$5 million Subscription Amount to Vision Marine. *See* Ex. A, SPA §§ 2.1, 2.2(b).

24. The Closing Date occurred on January 24, 2023 pursuant to the terms of the SPA.

25. The SPA was never terminated and remains in effect.

SAN GABRIEL'S FAILURE TO FUND

26. The Closing Date, January 24, 2023, came and went and San Gabriel failed to pay any funds to Vision Marine.

27. Vision Marine and Roth closed on the sale of the other securities on January 24, 2023. Vision Marine issued the agreed common shares and warrants to each Purchaser who paid their Subscription Amount, which was every Purchaser except San Gabriel. Without San Gabriel's investment, Vision Marine only raised a fraction of the expected capital.

28. On January 25th and 26th of 2023, there were multiple conversations between representatives from Roth, Vision Marine, and San Gabriel. San Gabriel intimated that the funds were still coming and made excuses for not paying its Subscription Amount.

29. However, San Gabriel never transferred any funds to Vision Marine and never made its agreed investment in Vision Marine.

30. Upon information and belief, San Gabriel was and remains fully able to perform its obligations under the SPA.

31. Vision Marine performed all of its contractual obligations under the SPA and was willing and able to perform its remaining obligations under the SPA on the Closing Date.

32. On January 27, 2023, Vision Marine issued a press release disclosing *inter alia* that it had closed an offering with certain investors for the issuance and sale of 554,253 of its common shares at a price of \$4.21 per share, for gross proceeds of approximately \$2.3 million. The January 27, 2023 press release also disclosed that despite an agreement with an investor (San Gabriel) for the purchase, on the same terms as the securities sold in the closed offering, of an additional 1,187,648 common shares and common share equivalents (and warrants to purchase up to 1,187,648 common shares), such investor had not paid the purchase price for such securities.

33. As a direct and proximate result of San Gabriel's failure to provide equity funding to Vision Marine, Vision Marine has lost San Gabriel's \$5 million investment.

34. As a direct and proximate result of San Gabriel's failure to provide equity funding to Vision Marine, Vision Marine will need to seek alternative sources of funding. Because of San Gabriel's failure to close on its majority portion of Vision Marine's previously announced offering, the market for Vision Marine's securities may be depressed and if Vision Marine seeks to replace San Gabriel's promised investment, it may have to issue more shares to do so. Even if Vision Marine is able to arrange a replacement \$5 million investment, it will have been damaged by incurring the costs and expenses of arranging the replacement financing, the loss of the time-value of money, and the difference in the price Vision Marine may sell its shares as compared to the price San Gabriel agreed to pay, among other things.

35. As a direct and proximate result of San Gabriel's failure to provide equity funding to Vision Marine, Vision Marine has suffered reputational damage. Investors, Roth Capital, and

other prospective investment banks, professional investors, plus other market participants are questioning the judgment of Vision Marine's board of directors and management as a result of the failed closing on the majority of the announced equity funding raise. Prospective original equipment manufacturer ("OEM") partners and supply chain vendors could also be deterred from moving forward with Vision Marine due to a lack of funding.

36. As a direct and proximate result of San Gabriel's failure to provide equity funding to Vision Marine, other Purchasers under the SPA who relied on the total capital raise being \$5 million more when making their investment, may bring claims against Vision Marine.

COUNT I: BREACH OF CONTRACT

37. Vision Marine realleges and incorporates by reference paragraphs 1 through 36 of this Complaint as though fully set forth herein.

38. Vision Marine and San Gabriel entered into a valid contract, the SPA, through which Vision Marine agreed to sell San Gabriel certain of its securities for \$5 million.

39. Vision Marine has substantially performed its obligations under SPA. It issued the agreed securities to each Purchaser who paid the agreed purchase price.

40. San Gabriel materially breached the SPA by failing to fund its purchase of Vision Marine securities, despite its agreement and ability to do so.

41. Vision Marine was willing and able to perform its remaining obligation under the SPA on the Closing Date, namely the issuance of common shares and warrants to San Gabriel in exchange for San Gabriel's \$5 million Subscription Amount.

42. As a direct and proximate result of San Gabriel's failure to purchase Vision Marine securities as agreed in the SPA, Vision Marine has and will continue to suffer damages, including (a) loss of San Gabriel's \$5 million investment, (b) reputational damage, (c) potential

diminution of its share price, (d) the costs of arranging replacement financing, (e) potential claims by other Purchasers under the SPA, and (f) an inability to close partnership sales ventures with OEMs currently contemplating such partnerships.

WHEREFORE, Vision Marine respectfully requests that this Court enter Judgment in its favor and against San Gabriel on Count One as follows:

- a. Compensatory damages in an amount to be proven at trial, but not less than \$5,000,000;
- b. Pre- and post-judgment interest, an award of Vision Marine's costs, reasonable attorneys' fees, and other expenses; and
- c. Any other and further relief that the Court deems just and proper.

Dated: March 1, 2023

Respectfully submitted,

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